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On legal disputes of tender for digital networks of public broadcaster

The Ministry of Innovation and ICT published a request for proposals on April 12, 2013, with the subject “For the Finance, Design, Supply, Installation, Training and Transfer of a DVB-T2 Network for the Republic of Albania.” The aim of the tender proclaimed by the Ministry was to select a company that would build the digital networks that would then enable the public broadcaster Radio Televizioni Shqiptar (RTSH) to transition its broadcasting from analogue to digital networks. The tender was carried out amid disputes of the opposition that it was not appropriate to undertake projects of such a scale immediately before the election period. Four companies applied for this tender and the Ministry proclaimed two winners in June through Order no.11, dated 17/06/2013: Rohde & Schwarz and Ericsson AB. According to the Ministry, both companies initially expressed their willingness to carry on with the contract, but Rohde & Schwarz company sent e-mails to the Ministry on July 2013, complaining on the procedure. The Ministry decided to exclude the company from the tender after failure of the company to clarify its position upon the Ministry’s request. Following the exclusion, the company filed a lawsuit on August 15, 2013 at the Court of Tirana, which rejected the request four days later. The Minister, faced with this situation and with an imminent rotation of power after general elections of June 2013, issued Order no.15, dated 29/08/2013, an order that annulled the tendering procedure altogether.

The company Rohde & Schwarz filed another lawsuit, challenging both the cancellation and the proclamation of two winners of the tender, which the Court of Tirana accepted with Decision no.12316, dated 09.12.2013. The court decision also ruled that the order the Ministry issued, proclaiming two bidders as winner of the tender, was illegal and consequently also repealed the order that annulled the tender procedures in August 2013. The Ministry, which by the end of 2013 had been transformed to Ministry of Innovation and Public Administration, appealed the court decision. The Court of Appeals ruled through Decision no.2712, dated 18.06.2014, that the matter had to be transferred to Administrative Court of Appeals, as it fell under its jurisdiction. At this point the Ministry decided to stop appealing the case and the Administrative Court of Appeals

issued Decision no.3407, dated 15.09.2014, which ruled that the case was closed. Following the court decision, Order no.3663, dated 29.09.2014, was published in the Bulletin of Public Procurement no.41, dated 13.10.2014, which proclaimed the company Rohde & Schwarz as the sole winner of the tender to build the digital networks of public broadcaster RTSH.

After these procedures, the final decision of the Ministry was challenged by the other bidder of the tender, the company Ericsson AB, as incompatible with the Constitution of Republic of Albania. The Constitutional Court decided to reject the lawsuit. Decision no.195, dated 05.12.2014, stated that Ericsson AB company was seeking to repeal a court decision that resulted from a process the company had not been part of and therefore in no position to appeal the decision. The court stated that the company also had not exhausted all other court instances and hence it should not file the request with the Constitutional Court.

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